

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/91/2019

M/s. Telecom Consumers Product Pvt. Ltd.

Appellant

VS.

RPFC, Delhi (North)

Respondent

ORDER DATED:- 14/12/2021

Present:- Shri S.P Arora&Sh. Rajiv Arora, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held through video conferencing on 22.11.21, though no written objection was filed. The record reveals that the impugned order u/s 7A was passed by the commissioner on 30.7.19 and the appellant filed the appeal on 12.9.19. Hence the appeal has been filed within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7O of the Act. The learned counsel for the appellant submitted that the impugned inquiry was initiated on the basis of the complaint made by one employee of the establishment, who later on withdrew the same as observed in the impugned order. On account of the said single complaint the area enforcement officer was asked to inspect the establishment, who in his report made several allegations and pointed out several discrepancies and on the basis of the said report the 7A inquiry was started. The respondent when served show cause notice on the appellant establishment, a proper and detail reply was submitted. But the commissioner never considered the same. On the contrary it was observed in the impugned order that the establishment has intentionally bifurcated the basic salary to different allowances. The said allowances were also paid universally attracting PF

contribution. Erroneously that the commissioner also took into consideration the conveyance allowance was paid to the field staff as reimbursement as per the terms of their condition of employment, for computation of basic wage. Not only that the commissioner passed the order without application of mind in respect of the excluded employees holding erroneously that the actual basic salary of the said excluded employees are much less than the statutory wage ceiling. It has also been pleaded that the impugned order was passed without identification of beneficiaries, which makes the impugned order illegal. It is also submitted that the order is based upon the report of the E O only. Citing various judgments of the Hon'ble SC, he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the objection raised by the appellant. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. All these aspects if would be considered, the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having a large business infrastructure in the country, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also submitted that non identification of beneficiaries would not influence the merit of this case as the inquiry was in respect of all the employees of the appellant and it is admitted on record that all of them are being paid through bank transaction, which means the beneficiaries are identifiable. Not only that the list of employees receiving HRA was also provided by the appellant during inquiry.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. For the same it need to be considered that the period of default in respect of which inquiry was

initiated is very short i.e from from April 2017 to March 2018 but the amount assessed is 1,59,08,286/- Without going to the other details as pointed out by the appellant for challenging the order as arbitrary ,and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **Mulchand Yadav and another** .Thus on hearing the argument advanced, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as has been held by the Apex court in the case of **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 30%. Accordingly the appellant is directed to deposit 30% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way of FDR in the name of the Registrar CGIT initially for a period of one year with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. There would be an interim stay on the impugned order till the next date. Call the matter on 02.02.2022 for compliance of the direction.

Presiding Officer